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UNCLAS LIMA 004228

SIPDIS

SENSITIVE

DEPT FOR WHA/AND, WHA/EPSC, EB/IFD/OFD, EB/CBA, EB/IFD/OIA
TREASURY FOR OASIA/INL, DO/GCHRISTOPOLUS
COMMERCE FOR 4331/MAC/WH/MCAMERON
USTR FOR BHARMAN/DWEINER

E.O. 12958: N/A

TAGS: [EINV](#) [ECON](#) [ETRD](#) [PGOV](#) [PE](#)

SUBJECT: ANOTHER ATPDEA DISPUTE RESOLVED

REF: A) LIMA 4033 B)LIMA 2017 C) LIMA 995

¶11. (SBU) Summary. The General Manager of Luz del Sur (owned by New Jersey-based PSEG and Californian Sempra Energy) informed us that the company's dispute with Peru's tax authority, SUNAT, is fully resolved. SUNAT determined that Luz del Sur owed 929,000 soles (approximately \$282,000) in back taxes and interest through 1999. The company gladly accepted the figure in light of the earlier \$73 million tax liability. SUNAT also agreed not to appeal the Tax Court decision that prevented the agency from reopening the 1996-97 tax years. Only three of the original nine ATPDEA disputes -- Engelhard, Princeton Dover and LeTourneau -- remain. End Summary.

Luz del Sur Pleased With Result

¶12. (SBU) In 2001, Peru's tax agency, SUNAT, disputed Luz del Sur's use of accelerated depreciation to determine tax liability and argued that the company overvalued its assets to reduce its tax burden. The issue initially went to both arbitration and a parallel Tax Court proceeding. Luz del Sur won in both instances, but SUNAT was permitted to revisit the case. In July 2003, SUNAT assessed Luz del Sur with \$56 million in back taxes due in 1999 (a figure that grew to \$73 million). Luz del Sur again appealed the SUNAT assessment to the Tax Court, which ruled in February 2004 that the company had a right to revalue its assets. The Tax Court directed SUNAT to employ GOP agency CONATA (state-owned valuation firm) to conduct a new appraisal of Luz del Sur's assets.

¶13. (SBU) The Tax Court issued a ruling on July 26 that accepted the CONATA appraisal of the U.S. company's assets (Ref B). The Tax Court then instructed SUNAT to use that valuation to determine any back taxes that Luz del Sur owed. Mile Cacic, General Manager of Luz del Sur, told EconCouns on September 26 that SUNAT issued its final assessment of back taxes owed by the company: 929,000 soles (approximately \$282,000) of which 552,000 soles covered interest and penalties. On a related issue, Peru's Commercial Dispute Coordinator Aurelio Loret de Mola informed us that SUNAT would not appeal a Tax Court ruling that prevented the tax agency from revisiting the 1996-97 tax years.

Comment

¶14. (SBU) With the resolution of the Luz del Sur case, Peru now has three of the original nine ATPDEA cases to contend with -- Engelhard, Princeton Dover and LeTourneau. In a positive development, the GOP prosecutor recommended dropping the two local Engelhard executives from the large criminal case involving gold suppliers and exporters. To his disappointment, Princeton Dover's executive is likely to be included in the criminal case. The Ambassador plans on meeting with Loret de Mola shortly to discuss strategies for resolving the remaining disputes.

STRUBLE